IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 14059 of 2006
DATE OF DECISION:11.9.2006
****

The Executive Engineer, PWD (B&R) Naraingarh

..PETITIONER

VS.

Presiding Officer, Labour Court, Ambala & Anr.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. Ajay Chaudhary, DAG Haryana
for the petitioner.
****

ARVIND KUMAR,J.

The facts of the case are that respondent No.2-workman served a demand notice upon the petitioner-department alleging therein that he had served the petitioner-department from 1.4.1995 till his services were illegally terminated on 1.12.1996, without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for brevity the Act). His claim was contested by the petitioner-department on the ground that the workman worked with them intermittently, as per requirement of work, during the period April 1995 to November 1996. Thereafter, he abandoned his job and never come to duty. Additionally, it was also pleaded that the petitioner-department is not an industry within the meaning of Section 2(j) of the Act. The Labour Court vide the award dated 9.8.2004, which is the subject matter of challenge in this writ petition, turned down the plea of the petitioner-department of abandonment of service by the workman after November 1996 and held that there was violation of provisions of Section 25-F of the Act while terminating his services. It accordingly set aside the

termination of the services of the workman and ordered his re-instatement with continuity of service, without any back wages.

Dissatisfied with the same, the petitioner-department has filed the instant petition under Articles 226/227 of the Constitution of India challenging the impugned award.

We have heard learned Deputy Advocate General appearing on behalf of the petitioner-department and have gone through the paper-book carefully.

The stand of the petitioner-department is that the services of the workman were never terminated. Rather, it is the workman himself who abandoned the job after November 1996. The fact that the workman had raised the industrial dispute after about three and a half years of his alleged termination, also strengthen the plea of abandonment. The question now arises is whether the workman had abandoned his job after November 1996 or that his services were illegally terminated by the petitioner-department? The question whether the employee has abandoned his service or not is a question which is required to be resolved in the light of facts and circumstances of each case. There cannot be any strait-jacket formula in that regard. Admittedly, the workman had worked with the petitioner-department from 1.4.1995 to November 1996. He had to his credit service of more than 240 days It is elicited out from the impugned award that no muster roll was issued by the petitioner-department after November 1996, on account of total ban imposed by them to engage labour on muster rolls. This fact led the Labour Court to conclude that, for this reason, workman was not engaged after November 1996. Moreover, the Labour Court, on the strength of statement of Satpal, Road Inspector (WW-2 before the Labour

Court), to the effect that the salary of the daily workers for the month of November 1996 was sanctioned and passed on 5.12.1996 and the payment was made thereafter, leaving no occasion for the workman to abandon his job after November 1996 has rightly concluded that all these facts falsify the plea of abandonment raised by the petitioner-department. Nothing has been shown to us to take a contrary view. The petitioner-department has also not shown anything to establish that the case falls under the exceptional clause (bb) of Section 2(oo) of the Act. Moreover, it is nowhere the case of the petitioner-department before the Labour Court that the claim of the workman is bad on account of delay and laches. If the petitioner had any grouse in that regard, they could challenge the reference order or at least agitate the claim of the workman before the Labour Court on the ground of limitation. Thus, this plea, for the first time before this Court, is not permissible. Admittedly, there was non-compliance of Section 25-F of the Act. Thus, in the light of facts and circumstances discussed above, we have no hesitation to say that the plea of abandonment raised by the petitioner-department is only to wriggle out of Section 25-F of the Act. Further, in support of the plea that the petitioner-department is not an industry, as defined in the Act, neither any evidence had been led nor was agitated by the petitioner before the Labour Court. Thus, for these reasons, this plea is of no avail to the petitioner, at this juncture.

It may not be out of place to mention here that the instant petition has been filed challenging the award dated 9.8.2004, after a lapse of about 2 years, that too without any explanation. The Supreme Court in the case of **Sadasivaswamy v. State of Tamil Nadu, AIR 1974 Supreme Court 2271** has clearly held that an aggrieved party has to move the Court

within a period of six months or at best within one year of the date when cause of action accrued. Sadasivaswamy's case (supra) has been followed by this Court in the case of **Harvinder Singh vs. State of Punjab & Ors. 2005 (2) SLR 587**. Therefore, the instant petition also suffers from delay and latches.

In view of what has been stated above, we find no infirmity or illegality in the findings arrived at by the Labour Court. No interference is called for. The petition is wholly without merit and the same is dismissed in limine.

(ARVIND KUMAR)
JUDGE

September 11,2006 **(J.S. NARANG)**
Jiten **JUDGE**